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Letter dated 10 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 2 January 2003 (S/2003/26).

The Counter-Terrorism Committee has received the attached third report from Pakistan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex to the letter dated 10 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

Letter dated 25 February 2003 from the Permanent Representative of Pakistan to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to your letter dated 25 November 2002, I am enclosing additional information sought by the Counter-Terrorism Committee pursuant to paragraph 6 of resolution 1373 (2001) of the United Nations Security Council (see enclosure). It may be noted that our reply to question 1.15 will be provided later.

(*Signed*) Munir **Akram**

Enclosure

Supplementary report of Pakistan to the Counter-Terrorism Committee of the Security Council

Following are responses to the questions based on additional information provided by Pakistan to the Counter-Terrorism Committee on 11 July 2003

Paragraph 1.2

Q. Effective implementation of paragraph 1 requires that funds and other financial assets or economic resources of persons who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts are frozen without delay. Section 11 E of the Anti Terrorism Act 1997 provides for the freezing of the accounts of a 'proscribed organization' but depends for its operation on the making of an order adding the name of the organization to the First Schedule and does not, therefore apply to persons or entities identified generically. Section 110 of that Act enables an 'authorized officer' to detain only 'cash recovered' that is intended, or suspected of being intended, for terrorism but does not appear to allow the officer to deal with other property, such as financial instruments and other valuables, that can be cashed and used for terrorism or with cash that is not actually 'recovered', such as cash in a bank account. Is it the intention of Pakistan to include provisions addressing these aspects in the proposed law on money laundering and terrorist financing so as to fully comply with the requirements of paragraph 1 of the Resolution?

Response. The subject of terrorist financing has been removed from the scope of the draft anti-money laundering law after much consideration, since conceptually money laundering and terrorist financing are different issues.

- The proscription of an organization under the Anti Terrorism Act 1997 involves its notification by the Federal Government for including the name of the organization in the First Schedule of the Act. This is administrative action that is an effective and efficient method of proscribing an organization.

- Section 11O (c) of the Anti Terrorism Act 1997 read with Section 2 (z) (aa) (i) (a) & ii (b) of the Act defines terrorist property to include "any money or other property which is applied or made available, or is to be applied or made available, for use by the organization, and includes assets of any kind, whether tangible or intangible, movable or immovable, and legal documents or instruments in any form, whether written electronic or digital, and shares, securities, bonds, drafts and letters of credit."

- The above definition, therefore, comprehensively covers all financial instruments and other valuables that can be cashed and used for terrorism.

- Cash at the bank of organizations is frozen pursuant to their designation as terrorist organizations by the Security Council under its Consolidated List of Individuals and Entities pursuant to Resolutions 1267, 1333 and 1390. Also, it is frozen under Section 11 E of the Anti Terrorism Act 1997 after proscription of the organizations under the Act.

Paragraph 1.3

Q. The report mentioned that the draft law on Money Laundering and Terrorist Financing 'defines the offence of terrorist financing and makes it a predicate offence for purposes of money laundering'. The CTC would be grateful for confirmation that:

- *The provisions defining the offence of terrorist financing will extend to financial activity that relates to actual, proposed or potential acts of terrorism outside, as well as within, Pakistan, and,*

- *The provisions that make terrorist financing a predicate offence for money-laundering purposes will apply whether the acts of terrorist financing take place within Pakistan or outside.*

Response. As stated above the subject of terrorist financing has been removed from the scope of the draft anti-money laundering law.

- Sections 11J and 11K of the Anti Terrorism Act 1997 make terrorist financing a predicate offence for actual, proposed or potential acts of terrorism.

- The above sections of the Anti Terrorism Act 1997 when read with Section 3 of the Penal Code of Pakistan (PPC) extend the application of the above Sections to offences committed outside Pakistan.

Paragraph 1.4

Q. Could Pakistan please explain whether the existing provisions or the proposed law would enable the authorities in Pakistan to freeze funds, financial assets or economic resources of persons or entities, either resident or non-resident, on the request of another member state on the grounds that they are linked to terrorist acts or in those cases where they are linked to terrorism even though no terrorist act has yet been attempted or committed.

Response. At present there is no provision in Law that allows the Government to freeze funds, financial assets or economic resources of suspected persons or entities, either resident or non-resident, on the request of another State. In any case, in all countries, where this may be possible, the laws and the courts are involved to authorise such procedures to give them local cover, and appeals are also part of this process, of the rule of law.

Paragraph 1.5

Q. The CTC would be grateful for a progress report on:

- *the enactment of the law on money laundering and terrorist financing;*
- *the issue of the Ordinance to amend the Exchange Regulation Act; and*
- *the establishment, and commencement of operations , of the proposed national Financial Intelligence Center; and*
- *a copy of, or an Internet reference for, the texts of those proposed laws as soon as practicable after they become available for release into the public domain.*

Response. As stated above the subject of terrorist financing has been removed from the scope of the draft anti-money laundering law.

- Anti-Money Laundering (AML) law is still under process.
- The amendment allowing for formulation of exchange companies is now in place with the enactment of the Ordinance to amend the Foreign Exchange Regulation Act.
- The establishment of Financial Intelligence Unit (FIU) will be under the provisions of the AML law. The proposed law under section 14 states that "the Federal Government shall establish, by notification in official gazette, the Financial Intelligence Bureau under the general supervision of the Minister of Finance".

Paragraph 1.6

Q. In response to the question in the letter of 18 April 2002 whether financial intermediaries outside the main financial sector (e.g lawyers) are required to report suspicious financial transactions to the authorities, the supplementary report states that, on the bases of the concept of the privileged lawyer-client communication, there are, at present, no laws in Pakistan requiring lawyers to report suspicious transactions. Since there are situations in which lawyers act for clients in the role of brokers rather specifically as legal advisers and their other professions (e.g accountants, stockbrokers) who act on occasion as financial sector, the CTC would be grateful for information on any existing or proposed requirements in Pakistan for the reporting by those intermediaries of suspicious transactions that come to their notice outside a privileged relationship.

Response. Section 11(L) of the Anti Terrorism Act 1997 provides for disclosure of information regarding the commission of terrorist offences. The Section, however, is not applicable to professional legal advisors who obtain any such information in privileged circumstances. The text of the provision is given as under:

(1) Where a person –

(a) believes or suspects that another person has committed an offence under this Act; and
(b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment, he commits an offence if he does not disclose to a police officer as soon as is reasonably practicable his belief or suspicion, and the information on which it is based.

(2) It is a defence for a person charged with an offence under sub-section (1) of this section to prove that he had a reasonable excuse for not making the disclosure:

Provided that this sub-section does not require disclosure by a professional legal advisor of any information which he obtains in privileged circumstances.

(3) A person may disclose to a police officer:

(i) A suspicion or belief that any money or other property is terrorist property, or is derived from terrorist property; or
(ii) any matter on which the suspicion is based.

(4) Sub-section (3) shall have effect notwithstanding any restriction on the disclosure of information imposed by any law for the time being in force.

Paragraph 1.7

Q. Please confirm whether Madressah Registration Ordinance 2002 is now in force. Does it, as an Ordinance, have effect for only a limited time? If so, what plans are there for longer-term legislation regulating madressahs?

Response: Ministry of Religious Affairs, in consultation with the Ministry of Interior, prepared the Deeni Madaris Ordinance. Following recent elections and the formation of the National Assembly, the draft law has to be approved by the Parliament.

The institution of the Madrassah, has historically, in Islamic culture, played an important role in the educational development of Muslims. In Pakistan, Madrassah's also perform an important social service of providing education. In order to avoid, the misuse of the Madrassah, while awaiting the enactment of the law, the Government has implemented far reaching administrative actions to regulate and streamline their activities through compulsory audits to determine the exact sources of finances at the disposal of the Madaris.

Paragraph 1.8

Q. Effective implementation of paragraph 2 of the Resolution requires that recruitment to terrorist groups and supply of weapons to them be suppressed. The definition of 'terrorism' contained in section 6 of the Anti-terrorism Act 1997 does not appear to extend to acts that are directed against other Member States or their citizens. Similarly, Section 11V of the Anti-terrorism Act refers to the 'instigation or the commission of acts of terrorism'. In terms of definition in section 6, these acts are criminalized only if they are directed against the Government or the public. 'Government' is defined in paragraph (i) of section 2 as 'the Federal or, as the case may be, the Provincial Government'. The CTC would be grateful to know how Pakistan would deal with the recruitment of persons, or the supply of weapons, in Pakistan to terrorists or terrorist groups operating outside the territory of Pakistan.

Response: The application of Section 11V of the 1997 Anti Terrorist Act adequately covers all such situations where terrorist activity is suspected whether undertaken against the State or outside the state to other areas and territories not directly controlled by Pakistan. The Government of Pakistan is not allowing any terrorist unit or cell to operate from its territory against another state. This has been reiterated on countless occasions at the highest of levels. It would also be important to take into consideration Section 121 and 125 of the Penal Code that deals with commission of crimes outside the jurisdiction of Pakistan.

As regards disarmament of the terrorist groups, the Government launched a de-weaponization campaign, especially of illegal weapons/arms and has imposed a ban on the display of weapons to discourage an arms culture. So far 230216 illegal weapons have been recovered (January 2003). The campaign is continuing and has helped reduce weapon possession in Pakistan.

Paragraph 1.9

Q. As regards provision of early warning on anticipated terrorist acts, it is stated in the first report that Pakistan exchanges information through INTERPOL and, in the supplementary report, that Pakistan exchanges information with countries with which it has extradition treaties and with "other coalition member countries." How, and in what circumstances, would Pakistan directly exchange of information with other countries, as contemplated by sub-paragraph 2(b)?

Response: Pakistan regularly exchanges information with all friendly and non hostile States, whether they are coalition partners and have signed extradition treaties with Pakistan or not. Such information is provided to these countries through their embassies/consulates in Pakistan and through our embassies in these countries as well as in accordance with arrangements under various international organizations such as INTERPOL and the United Nations.

Pakistan is always ready to cooperate with all states towards furthering the international objectives against illegal transactions of dangerous substances, technology, scientists, equipment and information against terrorists indulging in such and other illegal activities. These actions of the Pakistan Government also help in tracing and subsequent arrests of criminals involved in terrorist activities.

Paragraph 1.10

Q. Effective implementation of Sub-paragraphs 2(d) & (e) requires the criminalization of the use of Pakistan territory for the purpose of committing terrorist acts against other states or their citizens or for the purpose of financing, planning and facilitating of terrorist acts against other states or their citizens, even if the related terrorist acts have not been attempted or committed. Please provide an outline of the provisions, if any in this regard or, if there are none, of the action that Pakistan proposes to take in this regard.

Response: Pakistan has been a victim of terrorist acts. We are against all kinds of terrorism that is state-terrorism, cross-border terrorism and international terrorism and are committed not to allow any person or organization to use Pakistan's soil for the acts of terrorism.

Sections 11-H to 11-K of the Anti Terrorism Act 1997 specifically criminalize various forms of terrorist financing, including directly and indirectly inciting others to finance and aiding and abetting. In order to make the anti-terrorism Act more effective, further amendments in Anti-Terrorism Act 1997 are being made.

Paragraph 1.11

Q. The supplementary report mentions, in response to the question in the letter of 18th April 2002 regarding the competence of Pakistan courts, that section 3 of the Penal Code provides that 'any person liable, by any Pakistani Law, to be tried for any offence committed beyond Pakistan shall be dealt with according to the provisions of this Court for any act committed beyond Pakistan in the same manner as if such act had been committed within Pakistan'. By what provisions are persons who are neither Pakistani citizens nor servants of the Government of Pakistan made "liable...to be tried for [an] offence committed beyond Pakistan" that is not committed against Pakistan? Please confirm that foreign fugitives found in Pakistan who are alleged to have committed or attempted terrorist crimes outside Pakistan will be either brought to justice in Pakistan or extradited.

Response. As regards the question that the foreign fugitives found in Pakistan who are alleged to have committed or attempted terrorist crimes outside Pakistan will be either brought to justice in Pakistan or extradited, it is stated that Section 11 V of the Anti Terrorism Act, 1997 read with Section 4 of the Pakistan Penal Code (PPC) and Section 188 of Criminal Code of Pakistan (Cr. PC) prevent support within Pakistan to acts of terrorism carried out or proposed to be carried out elsewhere. Under Section 11 V(2) of the Anti

Terrorism Act, 1997, a person guilty of an offence under sub section (1) shall be liable on conviction to imprisonment for a maximum term of 07 years and to forfeiture or confiscation of his assets within or outside Pakistan. Besides Pakistan has Extradition Agreements with 27 countries, and, therefore, may extradite the person who is found to have committed or attempted terrorist crimes outside Pakistan."

Paragraph 1.12

Q. Sub paragraph 2 (f) requires Member States to afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support to terrorist acts, including assistance to obtaining evidence in their possession necessary for the proceedings . What plans does Pakistan have for making it possible to render such assistance to Member States with which it has no extradition treaty, should such a request be made?

Response: Pakistan, in all such circumstances where sufficient evidence has been provided justifying recourse to such action, can adopt the following procedure if required:

- Extradite the person to a third country with which it has an extradition treaty;
- Extradite the person to the requesting state under a specific bilateral arrangement; or
- Act on behalf of the requesting state to obtain and provide the necessary information.

Paragraph 1.13

Q. The CTC would be grateful to be informed how the international Conventions against terrorism ratified by Pakistan have been implemented through domestic legislation and the progress that Pakistan has made in regard to the ratification and implementation of the Conventions to which it has not yet become a party?

Response: Out of 12 UN Conventions Pakistan has already ratified/acceded to/signed eleven Conventions ar.d in order to implement these Conventions, appropriate provisions are available in our laws. However, wherever necessary, appropriate amendments would be made to cover the specific situation.

The two Conventions (International Convention for the Suppression of the Financing of Terrorism, and Convention on the Marking of Plastic Explosives for the Purpose of Detection), which have not been ratified/acceded to by Pakistan so far are being actively considered for ratification. In the mean time certain amendments are already being processed in the Anti-Terrorism Act, 1997 which deal with Terrorist Financing.

Paragraph 1.14

Q. In responsc to the question whether the crimes set forth in the relevant international conventions and protocols have been included as extraditable offences in the bilateral treaties to which Pakistan is a party, the supplementary report states that 'Pakistan is bound by the relevant articles of those Conventions and Protocols which stipulate that the offences set forth in the relevant Conventions and Protocols are deemed to be included as extraditable offences in any extradition treaty existing between States Parties and any extradition treaty to be concluded between them.' The CTC notes that, while the 'relevant articles' (for example,

paragraph 1 of Article 9 of the International Convention for the Suppression of Terrorist Bombings) provide that the relevant offences 'shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention', they also provide that 'States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.' The CTC would therefore be grateful for confirmation that extradition concluded by Pakistan after the entry into force of any relevant Convention or Protocol made the required provision.

Response: Pakistan signs extradition treaties with other countries in the light of the provisions of Extradition Act 1972. Pakistan has so far signed Extradition Treaties with 27 countries. The Extradition Offences are given in the Schedule of this Act. So far 23 offences are listed in the Schedule and others are being examined for incorporation, if required.

Paragraph 1.15

Q. Sub-paragraph 3 (g) of the Resolution contemplates that definitive provision will be made to ensure that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists. The supplementary report indicates that a 'political exception' is provided for in section 5 (2) (a) of the Extradition Act 1972 but, for it to apply, an authority 'has to be satisfied that requisition for (the fugitive's) surrender has, in fact been made with a view to his being tried or punished for an offence of a political character'. Does Pakistan intend to amend the law to provide definitively that the relevant offences are not political in character for the purposes of section 5(2) (a)?

Response: To be provided later.